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Federal Communications Commission

DA 97-2162

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of the)
Pay Telephone Reclassification) CC Docket No. 96-128
and Compensation Provisions of the)
Telecommunications Act of 1996)

ORDER

Adopted: October 7, 1997;

Released: October 7, 1997

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In the *Payphone Orders*,¹ the Commission imposed a requirement that, by October 7, 1997, local exchange carriers (LECs) provide payphone-specific coding digits to payphone service providers (PSPs), and that PSPs provide those digits from their payphones to interexchange carriers (IXCs).² The provision of coding digits is a prerequisite to payphone per-call compensation payments by IXCs to PSPs for subscriber 800 and access code calls.³

2. In this order we grant, on our own motion, pursuant to Section 1.3 of our rules,⁴ a limited waiver of five months, until March 9, 1998, to those LECs and PSPs that cannot provide payphone-specific digits as required by the *Payphone Orders*.⁵ This limited waiver applies to the requirement that LECs provide payphone-specific coding digits to PSPs, and that PSPs provide coding digits from their payphones before they can receive per-call compensation from IXCs for subscriber 800 and access code calls. This limited waiver is provided to afford LECs, IXCs, and PSPs an extended transition period for the provision of payphone-specific coding digits without further delaying the payment of per-call compensation as required by

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20,541 (1996) ("Report and Order"); Order on Reconsideration, 11 FCC Rcd 21,233 (1996) ("Order on Reconsideration") (together the "Payphone Orders").

² See *Report and Order*, 11 FCC Rcd at 20,591, paras. 98-99; *Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

³ *Id.*

⁴ 47 C.F.R. § 1.3.

⁵ *Order on Reconsideration*, 11 FCC Rcd at 21,265-66, para. 64, and 21,278-80, paras. 93-99.

Section 276 of the Communications Act.⁶ This limited waiver is effective immediately in order to ensure that PSPs receive per-call compensation beginning October 7, 1997.⁷

II. BACKGROUND

3. A toll-free call transmitted by a LEC to an IXC carries with it billing information codes, called automatic number identification ("ANI"), supplied by the LEC that assist the IXC in properly billing the call. Currently, however, not all payphone calls carry the payphone-specific coding digits necessary to identify the calls as payphone calls, making per-call tracking and blocking more difficult.

4. In the *Payphone Orders*, we imposed a requirement that LECs provide payphone-specific coding digits to PSPs, and that PSPs provide those digits from their payphones before the PSPs can receive per-call compensation from IXCs for subscriber 800 and access code calls.⁸ In the *Order on Reconsideration*, we clarified that, to be eligible for per-call compensation beginning October 7, 1997, payphones are required to transmit specific payphone coding digits as a part of their ANI, which will assist in identifying payphones to compensation payers.⁹ Each payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line.¹⁰ We also clarified that by October 7, 1997, LECs must make available to PSPs, on a tariffed basis, such coding digits as a part of the ANI for each payphone.

5. We have received three requests for a waiver of the payphone-specific coding digit requirements. On September 30, 1997, United States Telephone Association (USTA) petitioned the Commission for a waiver of the requirement that LECs supply the requisite coding digits to PSPs by October 7, 1997.¹¹ USTA states that "outstanding issues involving per-call tracking and payphone coding . . . cannot be resolved before the October 7 implementation date."¹² USTA requests that LECs with digital, equal-access switches be given an additional nine months to provide the technology required to supply and accommodate the coding digits; that LECs with non-equal-access switches be exempt from providing payphone identification information until

⁶ 47 U.S.C. § 276.

⁷ *Order on Reconsideration*, 11 FCC Rcd at 21265-66, para. 64, and 21,278-80, paras. 93-99.

⁸ See *Report and Order*, 11 FCC Rcd at 20,591, paras. 98-99; *Order on Reconsideration*, 11 FCC Rcd at 21265-66, para. 64, and 21,278-80, paras. 93-99.

⁹ See *Order on Reconsideration*, 11 FCC Rcd at 21265-66, para. 64, and 21,278-80, paras. 93-99.

¹⁰ See *id.*

¹¹ Petition for Waiver of the United States Telephone Association, CC Docket No. 96-128, Sept. 30, 1997 ("USTA Petition").

¹² USTA Petition at 2.

their switches are replaced or upgraded for equal-access; and that LECs be permitted to use whatever technology they select for digital, equal-access switches to provide information that will permit IXCs to track payphone calls in order to compensate PSPs.¹³

6. On September 30, 1997, the LEC ANI Coalition¹⁴ requested that the Commission waive the October 7, 1997 deadline, stating that LECs will be unable to supply forty percent of payphone lines with the requisite coding digits by that date.¹⁵ The Coalition indicates, however, that Ameritech, Bell Atlantic (South), BellSouth, Pacific Bell, Nevada Bell, and Southwestern Bell would commit to make payphone-specific coding digits ubiquitously available through FLEX ANI.¹⁶ The Coalition requested that the deadline be extended until the Commission issues an order clarifying the LECs' payphone-specific coding requirements.¹⁷

7. Finally, on October 1, 1997, TDS Communications Corporation, an owner of local exchange carriers, petitioned the Commission to extend the deadline for payphone coding digits from October 7, 1997, until July 1, 1998.¹⁸ TDS states that, in an effort to fulfill its obligations under the *Payphone Orders*, it needs additional time to arrange agreements with database suppliers, and to complete transmission tests to IXCs selected by its subsidiaries.¹⁹

III. DISCUSSION

8. We will place the three petitions or requests on public notice for comment. Meanwhile, we will grant, on our own motion, pursuant to Section 1.3 of our rules, a limited waiver, until March 9, 1998, of the payphone-specific coding requirement for those LECs and PSPs not yet able to provide transmission of such digits. Those LECs and PSPs that are able to transmit the required coding digits by October 7, 1997, remain obligated to do so. Similarly, the remaining LECs and PSPs are obligated to transmit the required coding digits as soon as they

¹³ See *id.* at 11.

¹⁴ Members of the LEC ANI Coalition include Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, SBC, SNET and U S West. See Letter to John Muleta, Chief, Enforcement Division, Common Carrier Bureau, from Michael K. Kellogg, Counsel for the LEC ANI Coalition, at 1 (July 28, 1997).

¹⁵ See Letter to John B. Muleta, Deputy Chief, Common Carrier Bureau, FCC from Michael K. Kellogg, Counsel, LEC ANI Coalition at 2, 4, 5 (Sept. 30, 1997) ("*Coalition Letter*").

¹⁶ *Id.* at 2.

¹⁷ See *id.* at 5. The Coalition also requested that the Commission grant a waiver pursuant to Section 69.4(g) of our rules so LECs can establish a rate element to recover the costs of providing payphone identification digits. Coalition Letter at 3, 5. We do not address this waiver request in this order.

¹⁸ TDS Communications Corporation Petition For Waiver, CC Docket 96-128, October 1, 1997 ("TDS Petition").

¹⁹ TDS Petition at 2-3.

are technically capable, but in any event no later than March 9, 1998.

9. During the period between October 7, 1997, and March 9, 1998, payphones appearing on the LEC-provided lists of payphones will be eligible for per-call compensation even if they do not transmit payphone-specific codes. This waiver of the requirements applicable to LECs and PSPs will provide LECs, IXC's, and PSPs with additional time that the record indicates is necessary to implement the procedures needed to transmit payphone-specific coding digits, without further delaying the payment of per-call compensation required by section 276 of the Act.²⁰

10. Waiver of Commission rules is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.²¹ We grant this waiver to address the special circumstance that transmission of payphone-specific coding digits is not yet ready for implementation for certain phones. The industry is, however, working on an expeditious resolution of this situation.²² The parties have submitted extensive correspondence showing that substantial efforts are being made to arrive at an industry-wide resolution of this matter.²³ The efforts to date indicate that the industry is working collaboratively in good faith toward the goal of enabling all payphones to transmit coding digits.

11. Waiver of this rule will serve the public interest because it will allow us to move forward in implementing the statutory requirement that PSPs receive fair compensation for calls placed from their phones. Refusal to waive this requirement would lead to the inequitable result that many payphone providers -- particularly independent providers who do not control the network modifications necessary to permit payphone-specific coding digits to be transmitted -- would be denied any compensation while implementation issues are being resolved by the industry.

12. This limited waiver, moreover, will not significantly harm any parties. The unavailability of these coding digits, for instance, will not preclude IXC's from identifying payphone calls for the purpose of determining the number of calls for which compensation is owed. Nor will the waiver interfere with the possibly sixty percent of payphones that currently are able to transmit payphone-specific coding digits. We note, also, that the Coalition states that

²⁰ This waiver does not change the obligations of LECs pursuant to our requirements in *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Third Report and Order*, CC Docket No. 91-35, 11 FCC Rcd 17,021 (1996).

²¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²² The Coalition states that sixty percent of payphones currently are capable of transmitting unique coding digits. Coalition Letter at 2.

²³ See, e.g., Coalition Letter at 2, 4, 5; USTA Petition at 2; and TDS Petition at 2-3. See also Letter to Michael K. Kellogg, Counsel, LEC ANI Coalition, from Richard H. Rubin, Senior Attorney, AT&T, at 1-2 (September 15, 1997).

its members are in the process of transitioning to a system that will provide the appropriate coding digits to the IXC's.²⁴ We grant this waiver based on the progress made to date, and we are expecting that the Coalition's members will fulfill this commitment.

13. The waiver will, we recognize, require IXC's to pay compensation for certain calls without the ability to block those calls on a real-time basis. We find that it is nonetheless in the public interest to grant the waiver because the mandate of Section 276 is that the Commission adopt rules that provide PSP's with per-call compensation, and the waiver will most expeditiously lead to this result. In light of this mandate, we conclude that the potential harm from the absence of compensation to PSP's would be greater than the potential harm to IXC's from the inability to block certain payphone calls before March 9, 1998.

14. We emphasize, however, the importance of implementing payphone-specific coding digit transmission as quickly as reasonably possible. We believe that it is important to require the industry to make substantial efforts to implement these requirements as quickly as possible. The time period chosen reasonably balances the interests of all concerned parties.

15. We also include LEC's that have non-equal-access switches in the general coverage of this waiver. We do not address in this order the special problems presented by non-equal-access switches that were raised in the USTA Petition.²⁵ We will be addressing in a separate order the issues raised by parties regarding the provision of payphone-specific coding digits by non-equal-access switches.

16. This waiver is effective immediately in order to ensure that all PSP's receive per-call compensation effective October 7, 1997, as required by the *Payphones Orders*. Without this waiver, many PSP's will not receive per-call compensation, because the LEC's servicing them are not yet able to provide the required payphone-specific coding digits. As discussed above, LEC's have argued that they have encountered problems implementing this requirement on a comprehensive basis. The immediate implementation of this waiver is crucial to the Commission's efforts to ensure fair compensation for all PSP's, encourage the deployment of payphones, and enhance competition among payphone providers, as mandated by Section 276 of the Act.

IV. CONCLUSION

17. Effective immediately, we grant, on our own motion, a limited waiver, until March 9, 1998, for those payphones that cannot provide payphone-specific digits as required by the *Payphone Orders*. This limited waiver applies to the requirement that LEC's provide payphone-specific coding digits to PSP's, and that PSP's provide coding digits from their

²⁴ See Coalition Letter at 2-4; see also Letter to John B. Muleta, Deputy Chief, Common Carrier Bureau, FCC from Ben G. Almond, Counsel, BellSouth (Sept. 30, 1997).

²⁵ USTA Petition at 9, 11.

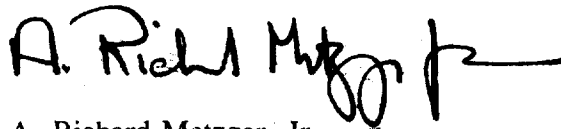
payphones before they may receive per-call compensation from IXC's for subscriber 800, access code, 0+ and inmate calls.

V. ORDERING CLAUSES

18. Accordingly, pursuant to authority contained in Sections 1, 4, 201-205, 218, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 218, 226, and 276, and Sections 0.91, 0.291 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291 and 1.3, IT IS ORDERED on the Commission's own motion that the time before payphone-specific coding digits are required for per-call compensation is extended until March 9, 1998, to the extent described herein.

19. IT IS FURTHER ORDERED that this order is effective upon release thereof, and that the waiver included in this order is effective October 7, 1997.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "A. Rich Metzger Jr.", with a stylized flourish at the end.

A. Richard Metzger, Jr.
Acting Chief, Common Carrier Bureau